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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session (17–21 November 2014)

No. 42/2014 (Yemen)

Communication addressed to the Government on 13 August 2014

Concerning Tariq Saleh Saeed Abdullah Alamoodi

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, by accession on 9 February 1987.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in

the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Tariq Saleh Saeed Abdullah Alamoodi was a soldier at the Yemen military Intelligence headquarters in Aden, Yemen.

5. It is reported that, on 22 September 2012, Mr. Alamoodi was arrested at his work place by the Special Unit of the Army, in which he is employed. According to his testimonials, following his arrest Mr. Alamoodi was taken to the Yemen Military Intelligence offices in Aden. Four days later, on 26 September 2012, he was transferred to the Intelligence Division of the Criminal Investigations Prison, also known as the Fatah detention centre, in Sana'a, where he was held until 16 January 2014. He was thereafter transferred to the military prison, known colloquially as the "Fortress prison", in Sana'a Old City. On 8 May 2014, he was again transferred to the Criminal Investigations Prison in Sana'a. On 21 May 2014, Mr. Alamoodi was taken to the Central Prison, in the Al Jaafar area, in Sana'a, where he remains detained to date.

6. According to the information received, Mr. Alamoodi's family took various steps during the period he was considered disappeared in order to find him and to receive any information concerning his situation. It is alleged that the State authorities failed to provide any responses to the family's request for information regarding the reasons for and the place of Mr. Alamoodi's detention. After several months of searching, the source reports that the family received information from a Yemeni soldier that Mr. Alamoodi was detained in the military prison in Sana'a. Through petitions sent to the General Prosecutor in Sana'a and the Minister of Human Rights to permit Mr. Alamoodi to contact his relatives or legal counsel, the family finally obtained the right to visit him in April 2013, eight months after his alleged disappearance.

7. The source reports that, during the short and intermittent visits which his family were allowed, they learned from Mr. Alamoodi that he had never been brought before a judge and he did not have access to a lawyer while detained incommunicado. As a result, he had been denied the possibility of being able to challenge the legality of his detention before a judicial authority. The family also learned that he was accused of committing acts of terrorism; however, they were never provided with any information regarding the facts upon which that accusation was based.

8. On 25 July 2013, Mr. Alamoodi's family wrote to the Office of the General Prosecutor requesting that Mr. Alamoodi be provided with a fair trial or immediately released. The General Prosecutor answered the family affirming that the case would be submitted to the competent authority.

9. The source reports that, only on 15 May 2014, approximately a year and a half after his arrest, was Mr. Alamoodi brought for the first time before a judicial authority and interrogated by the Specialized Criminal Prosecution. However, he has not been notified of any formal charges against him and no regular legal procedure appears to have been commenced to date.

10. The source submits that the deprivation of liberty of Mr. Alamoodi is considered arbitrary and falls under category I of the Working Group's defined categories of arbitrary detention. He has been deprived of his liberty without any legal basis from the time of his arrest and has remained detained for over 21 months in the absence of any judicial decision. The source reports that he was arrested without any justification, subjected to enforced disappearance and detained incommunicado for eight months. Even though he was brought before a judicial authority on 15 May 2014, he was not notified of any formal charges against him and was not the subject of any regular legal proceedings. According to the source, that infringes articles 32 (b) and 32 (c) of the Constitution of Yemen and is also contrary to article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

11. The source further submits that Mr. Alamoodi's deprivation of liberty falls under category III of the Working Group's categories relating to arbitrary detention, as his right to a fair trial has been denied, in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The source emphasizes that Mr. Alamoodi was not informed of the charges brought against him, nor allowed access to his file in order to prepare for his defence, nor granted the assistance of a defence counsel of his choice. He was deprived of any contact with the outside world and could not receive any visits or communicate with his relatives or a lawyer.

12. In particular, the detention of Mr. Alamoodi during 21 months, including eight months of incommunicado detention, violates his right to be brought promptly before a judicial authority. The source relies on general comment No. 8 (1982) on article 9 of the International Covenant on Civil and Political Rights, in which the Human Rights Committee determined that: "any person arrested or detained has to be brought 'promptly' before a judge or other officer authorized by law to exercise judicial power ... in the view of the Committee, delays must not exceed a few days".

Response from the Government

13. On 13 August 2014, the Working Group communicated the allegations of the source to the Government of Yemen, requesting it to provide the Working Group with detailed information about the current situation of Mr. Alamoodi and to clarify the legal provisions justifying his continued detention and their compliance with international law. The Government has not responded to the allegations transmitted to it.

14. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Alamoodi in conformity with paragraph 16 of its revised methods of work.

Discussion

15. As the Government opted not to rebut the prima facie reliable information submitted by the source, the Working Group accepts the information of the source as reliable.

16. In that regard, the Working Group recalls that, previously, in similar cases concerning Yemen, it had found that the persons were detained for years with no criminal charges, no legal assistance and no trial before a court of law.[1]

17. In the case under consideration, for more than two years, Mr. Alamoodi has been detained without having been informed of any reasons for his detention, and with no charges having been brought against him. That is a grave violation of article 9, paragraph 2, of the International Covenant on Civil and Political Rights, according to which anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

18. Furthermore, in violation of article 9, paragraph 3, of the International Covenant on Civil and Political Rights, Mr. Alamoodi was allegedly arrested for unidentified terrorist activities, and for 18 months was not brought before a judicial authority and no trial was scheduled in his case for over two years. Indeed, under article 9, paragraph 3, of the Covenant, anyone arrested or detained on a criminal charge shall be brought before a judicial authority within a few days and shall be entitled to trial within a reasonable time or to release.

19. Moreover, Mr. Alamoodi has been deprived of his right, provided for in article 9, paragraph 4, of the Covenant, to challenge the lawfulness of his detention before a court and to be released if the court finds the detention unlawful.

20. In violation of article 14, paragraph 3 (b), of the Covenant, for more than two years of his detention, Mr. Alamoodi has been deprived of the right to communicate with counsel of his own choosing.

21. In its 2009 annual report to the Human Rights Council, the Working Group listed the requirements of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights applicable to deprivation of liberty of persons accused of acts of terrorism.[2] In particular, it concluded that a person suspected of terrorist activities cannot be deprived of his rights provided for in paragraphs 2, 3 and 4 of article 9 and in article 14 of the International Covenant on Civil and Political Rights.

22. As to the fact that Mr. Alamoodi was a member of the Armed Forces at the time of his arrest, the Working Group concurs with the Human Rights Committee's view that paragraphs 2, 3 and 4 of article 9 and article 14 of the Covenant are applicable in cases of military prosecutions.[3]

23. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is of such gravity in the present case as to give the deprivation of liberty of Mr. Alamoodi an arbitrary character.

24. Thus, the deprivation of liberty of Mr. Alamoodi falls within categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

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[1] See Opinions No. 19/2012 (Yemen) and No. 17/2010 (Yemen).

[2] Report of the Working Group on Arbitrary Detention (A/HRC/10/21), paras. 50–55.

[3] See, for instance, 1649/2007, *El Abani* v. *Algeria*, paras. 7.6 and 7.8; 1813/2008; *Mulezi* v. *Democratic Republic of the Congo*, para. 5.2; 1051/2002, *Ahani* v. *Canada*, para. 10.2.

Disposition

25. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> The deprivation of liberty of Mr. Alamoodi is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within categories I and III of the categories referred to by the Working Group when considering cases submitted to it.

26. Consequent upon the opinion rendered, the Working Group requests the Government of Yemen to take the necessary steps to remedy the situation of Mr. Alamoodi and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

27. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Alamoodi and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 19 November 2014]